

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 101 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

VALLIULLAH BROTHERS

Appearance:

MR RP BHATT for Petitioner
MR SB VAKIL for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.R.JAIN

Date of decision: 25/07/96

ORAL JUDGEMENT

Tribunal has referred the following question under Section 256 (1) of the Income-tax Act, 1961 to this Court for opinion :

"Whether the claim of the assessee in respect of weighted deduction under Section 35B of the

Income-tax Act, 1961 is allowable in law and on facts in respect of the following items of expenditure (a) Marine Insurance Premium Rs.37,306/-, (b) Steamers Freight Rs.1,17,845/and (c) Railway Freight Rs.9,116/- ?"

The assessee is engaged in purchases of powerloom wind mill cloth from local market and in exporting the same outside India. For export, the assessee has claimed to have spent amount as referred to in question under three heads. It appears that the Tribunal was called upon to decide the entitlement of claim under Section 35B of the Act. With regard to the items referred to in the question, it appears that decision is rendered in favour of the assessee in view of earlier decisions rendered by the Tribunal.

Section 35B of the Act at the relevant period was as under :

"35B. Export markets development allowance.(1)(a) Where an assessee, being a domestic company or a person (other than a company) who is resident in India, has incurred after the 20th day of February, 1968, but before the 1st day of March 1983, whether directly or in association with any other person, any expenditure (not being in the nature of capital expenditure or personal expenses of the assessee) referred to in clause (b), he shall, subject to the provisions of this section, be allowed a deduction of a sum equal to one and one-third times the amount of such expenditure incurred during the previous year :

Provided that in respect of the expenditure incurred after the 28th day of February, 1973, but before the 1st day of April, 1978, by a domestic company, being a company in which the public are substantially interested, the provisions of this clause shall have effect as if for the words "one and one-third times", the words "one and one-half times" had been substituted.

- (b) The expenditure referred to in clause (a) is that incurred wholly and exclusively on-
- (i) advertisement or publicity outside India in respect of the goods, services or facilities which the assessee deals in or

provides in the course of his business....;"

- (ii) obtaining information regarding markets outside India for such goods, services or facilities;
- (iii) distribution, supply or provision outside India of such goods, services or facilities, not being expenditure incurred in India in connection therewith or expenditure (wherever incurred) on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit, where such expenditure is incurred before the 1st day of April, 1978;
- (iv) maintenance outside India of a branch, office or agency for the promotion of the sale outside India of such goods, services or facilities;
- (v) preparation and submission of tenders for the supply or provision outside India of such goods, services or facilities, and activities incidental thereto;
- (vi) furnishing to a person outside India samples or technical information for the promotion of the sale of such goods, services or facilities;
- (vii) travelling outside India for the promotion of the sale outside India of such goods, services or facilities, including travelling outward from, and return to, India;
- (viii) performance of services outside India in connection with, or incidental to, the execution of any contract for the supply outside India of such goods, services or facilities."
- (ix) such other activities for the promotion of the sale outside India of such goods, services or facilities as may be prescribed.

Reading clause (iii), it is very clear that the

expenditure incurred should be for distribution, supply or provision outside India of such goods, services or facilities, not being expenditure incurred in India in connection therewith or expenditure (wherever incurred) on the carriage of such goods to their destination outside India or on the insurance of such goods while in transit. Thus, it is very clear that if the amount is spent in the manner mentioned in sub-clause (iii) only then the benefit can be given. In view of the clear position that the amount has been spent in India for insurance and freight, the benefit cannot be extended and hence we answer the question in favour of the revenue and against the assessee.

Answer accordingly with no order as to costs.